IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 827 of 2007(W)

OS.43/2004 of SUB COURT,KOCHI

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PETITIONER:

SHAJAN, AGED 28 YEARS,
S/O.GEORGE, KAPPITHANPARAMBIL HOUSE,
ELANKUNNAPUZHA P.O., VYPIN, ERNAKULAM.

BY ADV. SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENTS:

1. KUNJAPPAN, AGED 54,
S/O.MYLANKUTTY, NIKATHITHARA HOUSE,
NAYARAMBALAM P.O., NAYARAMBALAM VILLAGE,
KOCHI TALUK.

2. KARTHEDOM RURAL CO-OPERATIVE
SOCIETY (KARTHEDOM MARANAVASYA SAHAKARANA
SANGHOM) LTD.NO.385, KARTHEDO,
MALIPURAM P.O.-682 511, ELAMKUNNAPPUZHA VILLAGE,
KOCHI TALUK, REP. BY ITS SECRETARY.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 8/1/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.827 OF 2006

Dated 8th January 2007

J U D G M E N T

Petitioner is the judgment debtor in O.S.43/04 on the file of Sub court, Kochi. Suit is for specific performance of an agreement for sale. Petitioner did not file a written statement. Suit was decreed ex-parte. Petitioner later filed an application to set aside the ex-parte decree and to receive the written statement. That petitions were dismissed by learned Sub Judge. Petitioner filed F.A.O.112/06 before this court along with an application to condone the delay of 40 days in preferring the appeal. Case of the petitioner is that meanwhile, decree is being executed and executing court passed an order to deliver the property and as the appeal was filed with an application to condone the delay, petitioner is not in a position to get an order of stay of execution in the appeal and therefore execution of the decree is to be stayed till the disposal of F.A.O.112/06 pending before this court.

This petition is filed under Article 227 of Constitution of India

2. Learned counsel appearing for petitioner was heard.

3. Question whether execution of the decree is to be stayed or not, is to be decided by the Division Bench before which F.A.O.112/06 is pending. Case of petitioner is that in view of the application for condoning the delay in filing the appeal petitioner cannot obtain an order of stay of execution and meanwhile if petitioner is to be dispossessed, it would cause much hardship to the petitioner especially when petitioner has a case that the agreement for sale was cancelled later. Considering all the relevant facts, execution of the decree in O.S.43/04 is stayed for three weeks from today, if not so far taken delivery of. Petitioner has to approach the Division Bench to get further order of stay of execution.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.